

BEFORE THE STATE PARKS AND RECREATION BOARD AND  
THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PROPOSED  
12.14.120 pertaining to payment of fees ) AMENDMENT  
for outfitting services )  
 ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Concerned Persons

1. On January 15, 2015, the State Parks and Recreation Board (board) and the Fish and Wildlife Commission (commission) propose to amend the above-stated rule.

2. The board and commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on November 28, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail [jesssnyder@mt.gov](mailto:jesssnyder@mt.gov).

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

12.14.120 COMMERCIAL USE PERMITS (1) through (6) remain the same.

(7) A commercial use permit may only be used by the holder of the permit. The permit holder may not sell, lease, or rent the permit, or otherwise receive compensation from another person for the opportunity to use the permit. The permit holder may hire or contract persons to provide authorized services provided that said persons do not recruit clients, make agreements with clients concerning monetary consideration or services provided, ~~collect fees from clients~~, or advertise any business other than the permitted business when conducting the permitted use. The permit holder is responsible for ensuring that the persons hired or contracted comply with the terms of the permit.

(8) A guide hired or contracted by an outfitter to provide authorized services may collect payment on behalf of the outfitter for services provided. Any and all payments must:

(a) not be cash;

(b) name the outfitter that hired or contracted the services; and

(c) be directly deposited to the outfitter that hired or contracted the guide.

(9) The requirements in (8) do not prohibit a hired or contracted guide from receiving a cash tip that is separate from any payment received for services provided. Proof of compliance with this rule must be made available to the department upon request. Any violation of these rules is subject to any and all

penalties and fines by law.

(8) through (12) remain the same but are renumbered (10) through (14).

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

REASON: The board and commission amended the commercial use rules earlier in 2014. During the public comment process, the Fishing Outfitters Association of Montana (FOAM) submitted a comment requesting the rules be amended to allow agents of outfitters the ability to collect fees. FOAM stated many times, the outfitter in charge of the trip is not present in all locations where their employees or contractors are conducting trips with clients, and the ability to collect fees from these clients is in keeping with current Board of Outfitters rules.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Fish, Wildlife and Parks, Attn: Commercial Use Rules, P.O. Box 200701, Helena, MT 59620-0701; fax (406) 444-4952; or e-mail FWPCCommercialUseComments@mt.gov, and must be received no later than December 5, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the department at the above address no later than 5:00 p.m., December 5, 2014.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be more than 25 persons based on the number of outfitters, guides, contracted employees, and clients.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the

Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Tom Towe  
Tom Towe, Chairman  
State Parks and Recreation Board

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

/s/ Dan Vermillion  
Dan Vermillion, Chairman  
Fish and Wildlife Commission

Certified to the Secretary of State October 27, 2014.